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DEPT PLS PASS TO USTR JCGROVES, KDUCKWORTH  
DOC/ITA/MAC/OIPR FOR CATHERINE PETERS AND JENNIFER BOGER  
PLEASE PASS TO USPTO JURBAN AND LOC STEPP  
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E.O. 12958: N/A  
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [AR](#)  
SUBJECT: Embassy Buenos Aires' IPR Strategic Plan: 2007 Report Card  
and 2008 Goals

REF: A. BUENOS AIRES 231  
[1](#)B. 07 BUENOS AIRES 1720  
[1](#)C. 07 BUENOS AIRES 927

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Summary and Introduction  
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[1](#)1. (SBU) Post recently submitted our 2008 Special 301 recommendation that Argentina remain, for the 13th consecutive year, on USTR's Priority Watch List (Ref A). Given the myriad challenges and deficiencies of the Argentine IPR regime, Post in 2007 developed a strategic plan (Ref C) to integrate efforts of all Mission elements to address specific deficiencies in IPR legislation, regulation and enforcement and to mobilize and coordinate Mission IP education, training and public outreach efforts. This cable reviews our IP strategic plan performance in 2007, and outlines Post's goals for [1](#)2008. Our 2007 plan was ambitious and the results mixed: on legislation, though there was little progress in improving either patent or copyright protection laws, an AmCham IP Committee-drafted trademark bill was introduced into parliament, and it appears the GoA will draft and pass in 2008 an embassy-supported seed law which we hope will help ensure royalty payments for GMO products. Post efforts to have the GoA publish regulations implementing a law authorizing Customs interdiction of any IPR violation failed, with the GoA instead submitting to parliament a proposal to narrow the law's scope. Enforcement and education efforts were our most successful: with DoJ support, we brought together representatives of nine different GoA law enforcement entities plus key members of the private sector to draft a "best practices" manual for IPR case investigation and prosecution (Refs A & B), and notable numbers of pirated IPR goods were detained and destroyed. Public outreach was also positive, with Post leveraging broad media coverage of a number of Ambassador's IP presentations and op-eds to broadly disseminate our message to the Argentine public.

[1](#)2. (SBU) In 2008, Post will continue actively engaging GoA executive, parliament, and enforcement officials as well as private sector and NGO players on IP issues. An overarching priority for the coming year will be to further leverage Mission IP efforts by expnding contacts and ties to new individuals and organizations with IP interests and responsibilities, seeking allies to move forward on specific initiatives. Our primary 2008 target areas are: working with the newly seated parliament to advance legislation and

regulation of existing laws to win better trademark and pharmaceutical patent protection; working with federal, provincial, and the city of Buenos Aires governments to improve enforcement of copyright and trademark violations; producing and distributing the above noted "best practices" manual for IPR case investigation and prosecution; leveraging INL funds dedicated to IPR granted in FY 08 to expand training for judges and prosecutors; and working with new and old contacts to get across the message that IP protection is very much in Argentina's own interest. Finally, we have established an inter-agency Mission working group, chaired by IPR Officer, to enhance in-house coordination. While we do not anticipate significant movement in any one of our target areas in 2008, we hope that small advances in several will add up to significant progress.

END SUMMARY AND INTRODUCTION.

### 13. (SBU) Review of Strategic IPR Plan:

#### 1I. New Legislation:

2007 Goals: We sought to (1) support a trademark law modification drafted by members of AmCham's IP Committee to increase deterrent penalties for violations and otherwise modernize a dated law; (2) sound out USG and GoA support for Argentine accession to the WIPO Patent Cooperation Treaty, which requires legislative action; and (3) explore implementation of data exclusivity. Given a request by AmCham members that our Mission refrain from direct advocacy with parliament, we assumed this would be a difficult issue area to move forward.

2007 Performance: Limited success.

-- We hoped to leverage a visit by Congressional Research Service Specialist Jeff Hornbeck in April to make key contacts, but the Argentine congress was on recess and he was only able to meet with staffers. The trademark law modification by AmCham was presented

formally by a Senator, but has made no further progress.

-- USG working-level contacts in EEB and USTR supported our goal to have Argentina accede to the multilateral WIPO Patent Cooperation Treaty, which is also an EU IPR priority. In Argentina, INPI resists accession both on grounds of reduced sovereignty in patent decisions and over concern about the increased number of applications they would receive.

-- Econ contacts in the GoA and the local international pharmaceutical industry advise us that the thorny issue of data exclusivity will only be addressed via a legislative fix, and that the GoA will only undertake such a fix if forced to by a WTO decision. Our pharmaceutical company and international chamber contacts tell us their headquarters are hesitant to push for a WTO case to be filed based on the possible worldwide consequences of an unfavorable decision.

-- FAS ensured that a proposed new seed law (which would ensure technology owners, including the U.S.'s Monsanto, receive payment for their products) was discussed in a September meeting between U.S. Acting Agriculture Secretary Conner and GoA Agriculture Secretary de Urquiza, and a November meeting between de Urquiza and

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now-House Agriculture Committee Chairman Peterson. The law was also discussed in November by Peterson and Argentine Congresswoman Ana Maria Berraute, then head of the Agriculture Committee in the Argentine House of Diputados, who made it clear that her committee will approve whatever is presented by the GoA. (The 2008 Committee Chair has not yet been named.) Congressional passage of such a law would encourage development of new technology and investment in Argentina, and would end Monsanto's longstanding dispute over Roundup Ready soy. The law has not yet been fully drafted, but our GoA Secretary of Agriculture contacts expect it to be presented in Congress early in 2008 and easily passed by the current administration's majority in both houses.

2008 Recommendations: Local research-based pharmaceutical chamber CAEME's IP committee plans to approach newly appointed parliamentary upper and lower house chairs of Economy, Industry, Penal Code, and

Health committees, all of which have broad influence on IP issues. At a December 2007 CAEME Board meeting, the Econ section agreed to work with CAEME, the EU, PhRMA and other interested parties to develop a coordinated legislative approach and parliamentary education strategy. (07 BA 2267 suggested that President Cristina Fernandez de Kirchner's (CFK's) service in the Senate may make her amenable to pursue the legislative route more often than her husband did.) Some pharmaceutical firms are considering linking improvement in GoA IP protection to future investment in clinical research in Argentina, and have even raised the possibility of not introducing new medications in Argentina unless IP disciplines are strengthened.

To highlight these concerns and possible consequences of continuing poor IP enforcement, we will explore having Ambassador host a round-table discussion with appropriate GoA officials, company reps, and perhaps Ambassador's EU and Swiss counterparts. AmCham has not requested any specific support for their trademark proposal, but will do so if they identify a way they believe we can be helpful. The Motion Picture Association (MPA) has also requested embassy support for their proposed law on protecting digital video content, and will coordinate with Mission IP team.

## II. Regulation/Implementation of Existing Legislation:

**2007 Goals:** We sought to encourage issuance of regulations of Law 25.986 (passed in 2004) that would give the GoA Customs agency the authority to detain incoming shipments on the presumption of an IP violation, and hold shipments long enough to obtain an official determination. (Just as the U.S. Code of Federal Regulations interprets and guides application of the United States Code, Customs needs regulations in order to apply the law.) The GoA Customs' trademark fraud alert program already in effect implements a portion of this law. (NOTE: Law 11.723, Argentina's primary copyright law, criminalizes the importation and sale of pirated products. Law 22.362, the main law regarding trademarks and patents, does not address imports of violating products but only the sale of same. Therefore, implementation of the law would, in practice, increase import/export protection only for patented products.)

**2007 Performance:** Unsuccessful. Far from expanding GoA Customs' authority to detain shipments on the presumption of IP violations, the GoA is attempting to limit Customs' interdiction authority to only copyright and trademark violations, whereas the passed version of the bill includes all intellectual property rights. The GoA proposal was sent to Congress on March 23 (but unbeknownst to us until May), shortly before we finalized the plan on March 27. Then-Secretary of Industry Peirano was especially unhelpful in this area: on March 26, we asked him about the regulation of this law and he feigned ignorance, though the proposal submitted the week before (signed by then-Minister Miceli, as well as then-Health Minister Gonzalez and Chief of Cabinet Alberto Fernandez) would likely not have moved forward without his blessing.

**2008 Recommendations:** The GoA proposal to limit the GoA Customs agency's authority advanced in Congress and has been passed by the Diputados full chamber as well as by relevant Senate committees. As we understand the legislative process, the Diputados' vote remains in effect for the entire 2008 session, but is void if the full Senate doesn't vote on the matter by the end of 2008. Mission will encourage Customs to aggressively push its case within the CFK administration. The Econ and Immigration and Customs Enforcement (ICE) sections will consult with GoA Customs Director Echegaray to affirm Customs' strong support for broader Customs IP authority and to ask for his guidance on how we can best support.

## III. Enforcement:

**2007 Goals:** We sought to organize (with Department of Justice support) a conference to develop a "best practices" manual for Argentine law enforcement and prosecutors to use in investigating IP crimes. We also sought to support Customs in its efforts to establish a new trademark fraud interdiction program, and to support MPA's local enforcement activities.

**2007 Performance:** Successful. Our single most significant IPR plan success this year was the DOJ-sponsored conference. Not only is the draft manual nearly finished, but it resulted in public/private and inter-agency cooperation on IP which did not exist previously. With ICE cooperation, the Econ section encouraged DHS/Washington to offer

informal assistance to Customs on trademark fraud procedures. Argentine Customs has not followed up on DHS' offer. Likewise, local MPA counsel has yet to take us up on our offer for greater Embassy engagement on MPA enforcement efforts. ICE has cooperated with Customs on a significant seizure of contraband goods (many of them trademark violations) which entered Mendoza from Chile. Per Ref A, total seizures of counterfeit and pirated goods by GoA police forces in 2007 were substantially higher than in 2006. According to data provided by Argentine Customs, the total retail value of trademark violations that agency seized was US\$ 32.9 million - an over 800% increase over the value of such seizures in 2006.

#### 2008 Recommendations:

-- Next step on the GoA inter-agency best practices manual project is for the original conference participants to meet again (tentatively set for March 26) to finalize the manual, publish, and distribute it. DOJ has committed \$2,000 for printing, and Econ will ask for LegAtt's assistance to obtain formal Public Ministry support for the publication. We will also encourage the manual drafting working group to seek permission to continue to meet and address other issues.

-- We will work with Argentine Customs to follow up on DHS' offer of informal assistance to Customs on trademark fraud procedures and work with local MPA counsel to pursue our offer for greater Embassy engagement on MPA enforcement efforts.

-- EEB's IPE office is considering initiating a tri-country (Arg, Brazil, Paraguay) tri-border multi-year enforcement initiative; we could offer to host the launch. Embassy BsAs ICE has also expressed interest in coordinating an IP-based training conference designed to inform Argentine and other Southern Cone customs, Treasury agencies on international best practices.

-- In general, seek closer cooperation with new provincial and city governments. For example, LegAtt will consult with new BA Province Minister of Security Carlos Stornelli to encourage him to address the La Salada market.

-- Letters from Ambassador to Ministers/appropriate authorities on occasions of large IP-related seizures/enforcement actions.

-- Recommend, with authorities at all levels, organizing "demonstration" raids/seizures which attract attention, and therefore send deterrent message.

-- Seek ways to better support internet enforcement issues. CAPIF is a leading actor in Argentina in this area.

#### IV. Education/Training:

2007 Goals: We sought to take advantage of existing resources - particularly within the USG - to offer IP training opportunities to GoA law enforcement, INPI and Customs officials and to encourage better integration of GoA inter-agency IP law enforcement efforts.

2007 Performance: Mostly successful.

-- In response to our request for financial support from INL to further our training of judges and prosecutors, INL approved \$15,000 for FY 08. Funding remains pending INL confirmation, but can be spent through FY 10.

-- Post nominated two officials who received USPTO training: one from Customs for a border enforcement course, and one from INPI for advanced patents.

-- The Econ section also obtained approval for 10 GoA officials from five agencies to attend (9 did so) an INL Intl Law Enforcement Academy (ILEA) IPR course in Lima in July.

-- Extensive efforts by the Econ section and ICE to secure participation by Customs in a USPTO-sponsored tri-border conference in Paraguay in May went for naught, as AFIP never gave formal approval. (Contacts attribute this to tiff between the head of AFIP and the head of Customs.)

-- On a trip for nine Argentine journalists funded by Monsanto in August, FAS arranged meetings with USDA, USPTO, FDA and EPA officials to discuss biotechnology and regulatory issues, including intellectual property protection. FAS also funded one LES to accompany group.

#### 2008 Recommendations:

-- Key question is how best to use/leverage \$15,000 in expected INL monies. Sending GoA officials to the U.S. for training is relatively expensive. INL funding could probably be best leveraged by bringing U.S. experts to Argentina. One thought is to arrange travel for U.S. IPR judges to provide multiple training opportunities for local judges and prosecutors. IPR Officer will consult with EEB/IPE to help identify appropriate trainers. INL funds could also support a series of videoconferences to be held in the PAS conference room or AmCham offices. USPTO's regional IP officer posted in Sao Paulo, Dorian Mazurkevich, is willing to conduct training/outreach here, or could do so via videoconference. Dorian was a featured speaker at this year's annual AmCham IPR Conference and after being posted in Brazil for the past year, and plans to travel to Argentina more extensively in 2008. We will propose to the GoA Supreme Court that the upcoming international Supreme Court justices conference they are sponsoring include an IP aspect. We have a strong indication of interest in supporting IPR training efforts from the World Justice Project and Proyecto Acceso - an NGO which promotes rule of law in Latin America.

-- INL monies could also be used to fund to deployment of CBP advisory personnel to Argentina to train Customs personnel with the identification and interdiction of potential IPR violations. Though specific to Argentine Customs, this would have regional implications as Argentina serves as a major consolidation point for IPR-suspect cargo being shipped into the TBA. CBP, through the coordination of DHS/ICE, has already undertaken "capacity building" country survey visits to Uruguay and Paraguay at the conclusion of FY 2007. The goal of these visits was to identify potential customs and immigration border enforcement training opportunities in both countries.

-- Work with new Minister of Health (Graciela Ocana) and her staff (including continuing head of GoA FDA equivalent ANMAT, Manuel Limeres) to arrange training and/or seminars on safety and therapeutic equivalence evaluations of generic medications.

-- FAS has proposed a Cochran Fellowship program on IPR and seeds for 2008, via a course offered by Michigan State University. FAS and Econ will collaborate to identify a candidate.

#### IV. Public Outreach:

2007 Goals: We sought to use appropriate outreach events as opportunities to emphasize the value for Argentina, a nation with notable human capital resources, to better protect the rights of innovators. We explored the possibilities of having Argentines in the creative industries collaborate with us to draw attention to the anti-piracy/falsification theme.

2007 Performance: Successful. The Public Affairs section highlighted Ambassador's addresses to four IPR conferences in 2007 and coordinated the timing and placement of linked op-eds under the Ambassador's name to good effect. Combined efforts with AmCham - World IP Day, the annual AmCham IPR conference, IP contest award - proved especially positive. Argentina's two leading print dailies, La Nacion and Clarin, proved willing allies in this effort, giving prominent space to Ambassadorial editorials, Mission-supported IPR events, and other IP issues.

#### 2008 Recommendations:

-- Continue Working with AmCham: The Econ section and Foreign Commercial Service (FCS) will continue to work closely with AmCham and make IP Day and their annual IP conference permanent areas of cooperation.

-- Joining Forces with Other Chambers: We will also look beyond AmCham for allies. Other professional chambers - including the CAC

(Argentine Chamber of Commerce), which has an anti-piracy program, and other bilateral business chambers with strong IP interests - are good candidates and their assistance could also prove very useful in areas such as support for new legislation and appropriate regulation of existing IP legislation.

-- Working with Argentine Public Figures: Charly Alberti of local rock mega-group Soda Stereo, who spoke at the DoJ seminar in favor of music copyright protection, has expressed interest in further joint IP efforts. Pablo Sonne, CEO of Argentine clothing firm Rever Pass (and panelist at AmCham's conference) has also expressed interest. One possible way to cooperate would be for these and/or others to publish editorials promoting the value for Argentina of protecting IP.

-- Find Outside Editorial Material: The Econ section will ask EEB/IPE to identify good English editorials (preferably by non-USG individuals) on the subject, and work with them to obtain permission to translate the works and publish them in select other countries.

-- Counterfeit Auto Parts Publicity: With assistance from PAS, encourage at least one car manufacturer (local GM rep has substantial information) and/or ADEFA to publish editorial about the dangers and other problems of counterfeit auto parts.

-- Book Fair: U.S. author Tom Wolfe has agreed to participate in the annual May Argentine Book Fair. The Public Affairs section will sound him out about addressing IP themes in his presentation.

-- Visits of senior USG IPR Officials: We will request a visit of IPR AUSTR Chris Wilson, which would include appropriate outreach and media coverage. Chris Israel, the Department of Commerce's International IPR Enforcement Coordinator, has also expressed interest in a visit.

-- PAS Programming: Regional or single country International Visitor programs on specific IPR themes and/or host periodic DVCs on IPR themes.

-- Film Showings with MPA: Expand on 2007 MPA coordination efforts with targeted pre-screening or post-screening IPR messages.

-- Regional Efforts: Through the intra-region USG IP mailing list the Econ section created this year, we can share editorials we have used and solicit input from other Southern Cone posts. The AmCham contest is also an idea which could be shared regionally, as a suggestion in places where nothing similar has been done, and to solicit different contest ideas where it has.

-- Publicity for Raids: Work with press to ensure broad coverage of "demonstration" raids (see "III. Enforcement," final "2008 Recommendation.")

NEW AREA for 2008: Seek Increased Cooperation with Other Entities

This will be a primary, overarching focus of our 2008 efforts.

Greater links will be sought with various diplomatic missions in Argentina (including the EU and Swiss missions), bilateral business chambers other than the AmCham, other private business chambers in Argentina such as the CAC and CIRA (Importers' Chamber), and new administrations of the city and province of Buenos Aires. The purpose will be to establish common ground on IP issues, identify areas of potential cooperation and put that cooperation into practice.

NEW AREA for 2008: Create Inter-Agency IP Working Group at Embassy

Create a group which will meet quarterly (and at specific other times, if appropriate) to discuss progress of this plan and other IP activities. The group will be chaired by IPR Officer and should have representation from ICE, FCS, LegAtt, FAS, PAS and POL. Group will seek to expand focus beyond domestic and TBA IP issues to ensure that problems at borders with Bolivia and Chile are addressed.

WAYNE